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Committee on the Rights of the Child
Seventy-first session

Summary record of the 2085th (Chamber B) meeting
Held at the Palais des Nations, Geneva, on Thursday, 21 January 2016, at 10 a.m.

Chair: Mr. Mezmur

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties (*continued*)

Combined third to fifth periodic reports of Kenya (CRC/C/KEN/3-5; CRC/C/KEN/Q/3-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Mr. Muigai** (Kenya), introducing his country's report, said that Kenya had ratified the Convention in 1990 and had continued to promote and protect the rights of children in the country ever since. About 53 per cent of the country's population was under the age of 18, and many of those children were vulnerable and in need of care and protection. The 2010 Constitution had enhanced the protection of children's rights through its provisions on, inter alia, citizenship by birth and social security. The Constitution defined a child as an individual who had not attained the age of 18 years; any law that was in conflict with that definition was deemed null and void. The Children Act of 2011 was currently under review, with a view to bringing it into line with the Constitution.

3. Recent efforts to give effect to children's rights included the adoption of the National Children Policy and the National Plan for Children in Kenya 2015-2022, which was part of the national development blueprint known as "Kenya Vision 2030". The latter focused on economic growth as a driver for success in the political, social and economic realms. It targeted orphans and vulnerable children as a special group.

4. Activities to care for and protect children were monitored and coordinated by the National Council for Children Services and were implemented by the Department of Children's Services in cooperation with relevant stakeholders.

5. With regard to children's right to survival, recent statistics showed decreases in infant mortality, stunting, new HIV infections among children and maternal mortality, along with an increase in immunization coverage. The Beyond Zero campaign, which promoted maternal, newborn and child health, was expected to bring about further improvements.

6. As for children's right to development, the Government had implemented free and compulsory basic education, resulting in an increase in enrolment rates in primary and secondary schools. The Special Needs Education policy framework aimed to provide a road map for the transition to an inclusive education system. The Constitution established safeguards and guarantees of children's right to protection from, inter alia, abuse, harmful cultural practices and hazardous labour. The Constitution and other legislation had strengthened the child protection system in several areas, including trafficking in persons, alternative family care and sexual exploitation.

7. As a result of judicial reforms, more children's courts had been established in Kenya, thereby improving access to juvenile justice. Measures had been taken to ensure universal birth registration, including the establishment of "one-stop shop" service centres to issue birth certificates for all children.

8. The involvement of children and young people in the drafting of the Constitution showed the importance attached by the Government to allowing children to participate meaningfully in decision-making processes. Guidelines on child participation had been drafted in cooperation with various stakeholders. The Kenya Children's Assembly provided regular forums where children could voice their concerns.

9. The remaining challenges in the quest to uphold the rights of the child included the large number of children living in poverty and the large number of orphans, which were due in large part to parental deaths from AIDS. The Child Labour Policy had been finalized and was currently under discussion by the National Assembly. The Government had also developed action plans to combat the trafficking and sexual exploitation of children.

10. The Government continued to increase its budgetary allocations for children's services. For example, it had overseen a huge increase in direct cash disbursements to orphans and vulnerable children in the previous decade. The Government was also raising awareness about the rights of persons, including children, with albinism and disabilities, with a view to changing cultural perceptions and attitudes towards them. At the same time, it was working to mitigate negative cultural practices: a law had been enacted prohibiting female genital mutilation; the Marriage Act had been adopted in 2014 in an effort to guard against child marriage; and the Protection against Domestic Violence Act adopted in 2015 provided protection and support for victims of domestic violence, including children.

11. Further measures to protect children from abuse included the establishment of a 24-hour, toll-free hotline, rescue centres and gender violence recovery centres. In order to prevent the recruitment of children to terrorist organizations, the Government was strengthening the capacity of school principals to deal with terrorism-related issues and was enhancing security through an initiative that emphasized community policing.

12. **Mr. Kotrane** (Country Rapporteur) asked whether the State party intended to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which it had signed in 2008, or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

13. Given the recent setbacks in the legislative process to amend the Children Act, he wished to know the expected time frame for the adoption of a new law to replace the Act and whether that future law would address issues affecting vulnerable children, particularly orphans.

14. It seemed that the National Plan for Children in Kenya 2015-2022 was not yet being implemented and that it followed the same structure as the previous plan, which had done little to strengthen the coordination of actions to benefit children. Detailed information about the new plan would be welcome, including information on measures to combat geographical disparities in public services. He wished to know about any measures taken to ensure effective coordination between the National Council for Children Services and the relevant ministries and to support inter-institutional coordination at both the national and local levels. He also wished to know about any specific measures taken to combat corruption in areas such as health, education and justice and about any convictions or punishments handed down in corruption cases.

15. The Committee was concerned that the best interests of the child were not always taken into consideration within the judicial system, particularly in cases involving sexual offences. He asked what the State party was doing to ensure that the principle of the best interests of the child was applied uniformly in all dispute resolutions and decisions in both the formal and informal justice systems.

16. He asked what measures were being taken to ensure that children's assemblies at all levels were accessible to all children without discrimination and to involve those assemblies in the development of laws and policies affecting children and in the monitoring of their implementation.

17. He wished to know about any measures taken or planned by the State party to adopt a law guaranteeing universal and free birth registration for all children, including those from minority groups and those living in rural and remote areas. Expressing his concern about reports of children being subjected to police brutality, domestic violence, corporal punishment and harmful practices such as female genital mutilation, he asked what steps the State party was taking to develop a national strategy to prevent and address all forms of violence against children.

18. **Ms. Khazova** (Country Rapporteur) noted that, while several ministries collected data on children, there was no comprehensive system to collect information on the realization of all rights of the child. She asked whether the national database on children being developed with the assistance of the International Labour Organization (ILO) was operational yet and whether it covered all areas of a child's life.

19. She requested further information on the human and financial resources allocated to the Kenya National Human Rights and Equality Commission. She asked the delegation to comment on reports that laws had recently been adopted with the aim of restricting the activities of civil society organizations. Despite being prohibited by the Constitution, discrimination continued to take place in the State party, particularly against girls and certain minority groups. She asked whether the Government had planned any strong measures to eliminate discrimination in practice.

20. She would like to know if reports of the killing and trafficking of children with albinism for body parts were true and, if so, what was being done in that regard. Expressing concern that a number of harmful practices, including early marriage, the "beading" practice among the Samburu people, wife inheritance and female genital mutilation, were still widespread in certain regions, she asked what practical measures were being taken to eliminate them. With regard to female genital mutilation in particular, she wondered whether the problem was also being tackled from an economic point of view given that practitioners depended on it for their livelihood.

21. **Mr. Cardona Llorens**, noting that it was difficult to identify what budgetary resources were actually being allocated for children, asked whether there were any plans to introduce child-sensitive budgeting. Although the State party's economic growth rate had averaged approximately 5 per cent since 2010, funding for children had not increased accordingly. Did the Government plan to compensate for that deficit? What guarantees had been put in place to ensure that all counties compensated for the reduction in the State budget in certain areas, including health, and to reduce disparities between urban and rural and coastal and inland areas? Noting that the lack of regulation of the private sector could lead to problems such as the illegal dumping of toxic waste, other forms of pollution that harmed children's health and high levels of child labour that could have serious consequences on children's rights, he asked what measures were planned to develop a clear mandatory legal framework for companies operating in the State so as to ensure that their activities did not have a negative impact on children's rights or the environment.

22. **Ms. Oviedo Fierro** said that she had been surprised not to find a single reference to freedom of expression, religion or association in the State party's report. She expressed concern that, although provision was made for the participation and freedom of expression of children, their views were not taken seriously by everyone working in the children's sector. There were examples of restrictions on children's right to freedom of association and freedom of religion, such as a court ruling banning the wearing of the hijab in school. It was also a matter of concern that children did not have access to a complaint mechanism to report violence in the home, at school or in the community, and the perpetrators of such violence thus enjoyed impunity. She would welcome information on children's access to the Internet and social networks, what was being done to help them avoid the risks related to that activity and whether

parents and teachers were involved in protecting children from such risks. Did the Government plan to guarantee reliable funding to ensure the long-term viability of the children's helpline and did the information received through that helpline inform activities in the area of child protection?

23. **Mr. Nelson** asked what follow-up had been given to the recommendations made in the aftermath of the incident at Lang'ata Road primary school in January 2015, when police had used tear gas against children. Had the officers involved been prosecuted or disciplined and had the police riot manual been reviewed? He wished to know how many domestic violence cases involving children had been brought before the courts and what kinds of sentences had been handed down. Did the State party have a "no-drop" policy in relation to domestic violence cases, to ensure that all such cases were prosecuted? Had any teachers or other persons in authority been prosecuted for using corporal punishment and, if so, what sentences had been handed down? What measures were in place to support child victims of violence in making complaints and were there shelters for abused children?

24. **Ms. Ayoubi Idrissi** asked what measures the State party was taking to implement the decision of the African Committee of Experts on the Rights and Welfare of the Child concerning discrimination against Nubian children, who were refused the right to citizenship and were thus at risk of statelessness and unable to access public services.

The meeting was suspended at 11 a.m. and resumed at 11.25 a.m.

25. **Mr. Muigai** (Kenya) said that the question of ratifying the optional protocols to the Convention was under active consideration. Following the promulgation in 2010 of the new Constitution, which expressly provided that all international agreements to which Kenya was a party were an integral part of domestic law, a moratorium on the ratification of any instruments had been put in place pending a comprehensive review, which had now been completed. A treaty ratification bill had been drafted to clarify the procedure for ratification of international conventions, so that the State party was now in a position to begin ratifying a range of instruments, including the protocols to the Convention.

26. The Sexual Offences Act contained clear provisions on the protection of children from trafficking and prostitution. A voluntary code of conduct, which specifically covered the protection of children from prostitution, had been signed by hotels and other businesses in the tourism sector. Unfortunately, Kenya, and particularly Nairobi, continued to be an attractive transit point for human trafficking. The Counter-Trafficking in Persons Act had been adopted to address the phenomenon and special anti-trafficking units had been set up. Although there were no major legal lacunae in that area, the Government recognized the need to ratify the Optional Protocol on the sale of children, child prostitution and child pornography.

27. With regard to the revision of the Children Act, it had been found, upon closer examination and following extensive consultations, that more than 90 sections required amendment. A consensus had been reached that it would be more sensible simply to draft a whole new piece of legislation rather than amend the existing one. An initial draft of the new bill had now been prepared and was expected to be finalized within the next year.

28. **Ms. Karanu** (Kenya) said that there had been extensive consultation in preparing the National Plan of Action for Children 2015-2022 to ensure that all organizations and agencies providing services to children in Kenya followed a standardized approach and felt a sense of ownership of the plan. The priority now was to raise awareness and disseminate the plan as broadly as possible. A monitoring framework had been developed to provide for a review of the plan's implementation

every three years. In order to ensure that county governments were also involved in implementing the plan, area advisory councils had been set up, with members drawn from civil society, religious organizations and the county government departments.

29. **Ms. Ngugi** (Kenya) said that the Ministry of Labour, Social Security and Services had been given responsibility for children's issues, rights and protection. The National Council for Children Services had been set up under the Ministry and included representatives of NGOs, faith-based organizations and the private sector. The Council exercised general supervision, planned finances, coordinated activities and advised the Government on all aspects relating to children. The main task of the Ministry's Department of Children's Services was to implement the policies drawn up by the Council.

30. **Mr. Muigai** (Kenya) said that corruption was a matter of grave concern in Kenya and the Government was taking strong action to tackle the problem. He had chaired a task force set up by the President to review the entire legal, institutional and police framework for combating corruption; the task force had recently produced an extensive report proposing numerous legislative and institutional changes. A new slate of legislation would be submitted to parliament in the coming days, including a new bribery law and whistle-blower protection law. A judicial vetting process begun when the new Constitution had been adopted in 2010 had recently been completed; all judges and magistrates serving in the Kenyan judiciary had been vetted, and many had subsequently been relieved of office. Only the day before, the Police Service had dismissed seven very senior police officers following a similar vetting process. Even as the State party report was being submitted, five government ministers had been relieved of their duties because they were under investigation for alleged corruption.

31. **Ms. Oguye** (Kenya) said that the Kenya Children's Assembly had been established in 2012 and was strong and active at the national, county and sub-county levels. The Assembly was gender-balanced and included at least one child with special needs. Meetings were conducted by the children without any interference from adults. Efforts were also made to ensure the participation of Kenyan children in international and national forums. International, regional and national days, such as the Day of the African Child, were observed, and children were invited to speak at and participate in events organized to mark those occasions. Policymakers paid attention to issues that arose in the Children's Assembly and other children's forums, such as negative cultural practices.

32. **Mr. Masese** (Kenya) said that the registration of births in Kenya was guided by the Constitution, which stated that any child under 8 years of age whose nationality and parentage were unknown was presumed to be a citizen by birth and therefore entitled to a birth certificate, and by the Births and Deaths Registration Act, which provided for the immediate registration of all births occurring in Kenya. There was no discrimination in that regard against ethnic Nubians living in Kenya. Their children received birth certificates.

33. Corporal punishment in schools had been outlawed by the Basic Education Act. The Marriage Act of 2014, for its part, had outlawed child marriage. Since its entry into force, anyone who married a person under the age of 18 was subject to imprisonment for up to 5 years or a fine of up to roughly US$ 10,000, or both. In addition, the Sexual Offences Act criminalized sex with children.

34. **Ms. Khazova** asked whether the Kenyan authorities believed that a mere legal prohibition was sufficient to abolish a practice — namely, child marriage — that had existed for centuries.

35. **Ms. Ayoubi Idrissi** said that she was aware that under Kenyan law all children had the right to a nationality and an identity. Cases brought before the African

Committee of Experts on the Rights and Welfare of the Child, however, had suggested that children of Nubian background had been denied birth certificates. She wished to know what the State party was doing to ensure that laws providing for the registration of all births in Kenya were properly enforced.

36. **Mr. Muigai** (Kenya) acknowledged that delivering birth certificates to children from minority groups resident in the country had often posed challenges. East Africa had a long history of porous borders, and Kenya was home to the world's largest refugee population. Indeed, two of the world's two largest refugee camps were located in Kenya. They were the size of major cities. Refugees in Kenya had come from Somalia, South Sudan and countries of the Great Lakes Region such as Burundi, Rwanda and the Democratic Republic of the Congo. On some occasions, people had fraudulently obtained Kenyan identity documents, including birth certificates. It had therefore become necessary to set up verification processes to ensure that such documents were delivered only to those who were entitled to them.

37. In any event, the Government had made a public commitment to resolving the issues faced by the Nubian and Somali minorities. The Government had also publicly stated that, for all practical purposes, the Makonde people were to be considered citizens of Kenya.

38. It was true that traditional social practices and the law were sometimes at odds. Kenyan lawmakers had therefore created a legal framework to take effective action against such practices as female genital mutilation and child marriage. The actions taken involved a considerable amount of advocacy, as it was often difficult for the Government to act without the help of local communities. As a result, child marriage, like female genital mutilation, was in retreat. It was the proponents of such practices, rather than their opponents, who were currently on the defensive.

39. The problem of attacks against and killings and trafficking of children with albinism was not nearly as serious as in some other countries in the region. A number of prominent Kenyans, including a High Court judge, were themselves living with albinism. He did not mean to suggest, however, that there was no more work to be done in that area, as the goal was to eliminate the problem altogether.

40. **Ms. Karanu** (Kenya) said that Kenya was still at the beginning of the process of developing a national database on children. In that connection, a number of relevant indicators had been defined.

41. **Ms. Oguye** (Kenya) said that the Department of Children's Services was working on a child protection information management system. Plans had been made to roll it out on a trial basis in 10 of the country's counties. In one of those counties, Kilifi, on the coast, there was a special system of using mobile telephones to report acts of violence against children. The Department of Children's Services was testing ways of feeding such reports into the information management system currently being developed. The aim was to ensure that even problems occurring in remote areas could be addressed.

42. **Mr. Muigai** (Kenya) said that legislation on the administration and operations of NGOs was still the subject of discussion. The aim of the legislation was not to restrict their activities but to provide for a transparent governance framework. NGOs whose activities had appeared to contribute to the radicalization of young people and the financing of terrorism had prompted concern. In response, it had seemed necessary to draft a law addressing such issues as who could run an NGO and what information NGOs were required to disclose. Plans had also been made to require more information from religious organizations. The legislation being discussed had not been designed to weaken the country's vibrant civil society organizations, of which the

country was rightly proud. On the contrary, the Government was of the view that it was in the best interests of the Kenyan people, and children in particular.

43. **Mr. Amoth** (Kenya) said that budget allocations for education had increased in recent years. Indeed, education expenditures were the single largest item in the national budget. Allocations to the Ministry of Health appeared to be decreasing, but appearances could be deceiving, as responsibilities for health had been devolved to the counties, where it was likely that allocations had increased, although by how much would not be clear until some time after July 2016, when the national health accounts were to be audited. A five-year health plan targeting mothers and their children was expected to involve an investment of some US$ 750 million.

44. **Mr. Cardona Llorens** asked whether the devolution of health expenditures to the counties had not increased the already significant inequalities between the coast and the highlands and between rural and urban areas. He also asked whether the authorities planned to draft budgets in such a way as to make it possible to identify more clearly the amounts earmarked for the implementation of specific children's rights.

45. **The Chair** asked whether he had understood correctly that, as a result of devolution, the recent drop in health expenditures of 14 per cent did not necessarily mean that there had been budget cuts to the health sector.

46. **Mr. Amoth** (Kenya) said that the audit planned for mid-2016 would shed light on how much each county had spent and for what particular programmes.

47. **Mr. Muigai** (Kenya) said that although health was a devolved function, the national Government provided budgetary support for county programmes relating, for instance, to maternal health care. It also provided special support to hospitals serving more than one county.

48. Kenyan children enjoyed the rights to freedom of expression, association and religion. In one case, a court had upheld the right of a school to ban the wearing of the hijab. That ruling had been appealed, however, and the authorities were awaiting the decision of the appeals court. Kenya was proud of its religious diversity, and the Government had no wish to curtail anyone's freedom to profess the religion of his or her choice.

49. **Ms. Karanu** (Kenya) said that the children's telephone helpline was a collaborative project between Childline Kenya and the Government. It provided the services of trained counsellors free of charge and no breaches of confidentiality had been reported. The funding partnership was coming to an end and the Government was currently considering how to maintain the helpline in the future.

50. **Mr. Muigai** (Kenya) said that the Government was aware that, despite its best efforts, some cases of violence against children still occurred in homes, in schools and at the hands of the police. In the unfortunate incident referred to by Mr. Nelson, students at Lang'ata Road primary school protesting against the appropriation of part of their school grounds had blocked a major road and the police had responded with an unacceptable use of tear gas. However, the officers concerned had been removed from their posts and subjected to disciplinary proceedings. The incident was not representative of government policy and the law clearly prohibited any violence by the police, whether against children or adults.

51. Sentences under the Sexual Offences Act included mandatory minimum periods of imprisonment for persons found guilty of sexual offences against minors. It had been supposed that the offenders concerned would all be adults, but the Act was now also being used against teenagers. Where sexual relations, even consensual, between adolescents had come to the knowledge of their families or community, the girl might

be coerced into lodging a complaint and a teenage boy could thus end up serving a sentence of 20 years in prison. Furthermore, sexual offences were defined as felonies and so negotiations between the parties could not be used to resolve the matter out of court, as was allowed in the case of misdemeanours. Hence thought was now being given to finding a solution to that problem. However, it was true that some cases of sexual offences were dropped before reaching the judicial stage and the communities concerned needed to be empowered and encouraged to follow them through. In respect of corporal punishment, both families and teachers were aware that it was prohibited and, although cases did still occur, the numbers were declining.

52. **Ms. Khazova**, noting that gender inequality and a lack of parent counselling services still led to imbalances between parents in terms of rights and duties, asked whether any measures were planned to improve the enforcement of child maintenance orders, particularly in light of the recent legalization of polygamy, which meant that a man might have several wives and many children. Did Kenya intend to accede to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance? She would also be interested to know whether a woman who entered into a monogamous marriage could be sure that it would not subsequently become polygamous.

53. She asked how the Government planned to address the lack of proper oversight of institutions catering for orphans and other vulnerable children and the absence of any complaints mechanism to which the children could turn. She would welcome information on progress in amending the Children Act and particularly whether the more than 1,500 children whose mothers were in prison were able to maintain permanent contact with them.

54. Substantial disparities had existed in the past between the different regions in terms of health-care services and it might be expected that the devolution of the health system would exacerbate the situation. Did the Government have plans for the rapid implementation of remedial measures should serious problems be brought to light when the first post-reform figures were announced? She would welcome information on how it would ensure that early childhood education, responsibility for which had also been devolved to the regions, was not adversely affected by the reform. School enrolment seemed to be a problem in the semi-arid areas of the country and in informal settlements. Private providers were not properly registered or monitored and the standard of education provided tended to be very low. One company in particular, Bridge International Academies, had 400 schools in the country catering for more than 120,000 children, with no guarantee of quality. Did the Government's educational guidelines include mandatory instruction on human rights and children's rights in all schools and, if so, how did the Government intend to enforce them? She would be interested to know whether education was provided free of charge for children who did not have Kenyan nationality. Since birth certificates now had to be produced to ensure that children were not too young when they started school, how did the Government intend to prevent enrolment rates falling where children's birth certificates were not available?

55. **Mr. Kotrane** said he would be interested to hear whether sporting and cultural activities were freely available to all children. He also wished to know what was being done to protect the rights of children in long-term refugee camps where insecurity was an increasing problem, and to respect children's right to family reunification. Noting that the problem of radicalization, including of children, might be linked to the marginalization of some ethnic or religious groups, he asked what the Government was planning to do to address that issue and to ensure that police officers respected children's rights when taking action in such cases. He would appreciate information on plans to address the economic exploitation of children, including in domestic

labour, which could be linked to child trafficking. Noting that the age of criminal responsibility remained at 8 years, he said that he would welcome information on the rather slow introduction of international standards of juvenile justice into the Kenyan justice system, and on how a balance was being sought between the need for justice and respect for the rights of the child.

56. **Mr. Cardona Llorens** said he would be interested to know what had happened to those children with disabilities who had been abandoned by their families but were not cared for in institutions and to the 99,000 children with disabilities who did not attend any type of school. He also inquired about the provision made for children with mental disabilities or albinism, who were not covered by the schools mentioned in the infor nation provided.

57. **Ms. Oviedo Fierro** said she would like to know whether reports of a rise in the number of teenage pregnancies were true and what the reason for such an increase might be. She asked what was being done to improve the experience of young girls trying to access health and abortion services when pregnant, as it seemed that conditions were frequently substandard and the girls were often treated badly by the staff. The information given on the legal situation surrounding abortion was not clear: it was apparently permitted under the Constitution in emergency cases but was prohibited under the Penal Code. What was being done in general to prevent maternal mortality in adolescent girls?

58. She requested data on the number of young people affected by illegal drug use, the number of child and adolescent suicides, and what was being done to improve mental health services for young people. What measures were being taken to prevent discrimination against, promote the integration of, and provide support to children and adolescents affected by HIV/AIDS? Details would also be welcome on sex education in schools and whether it was provided in all areas of the country, including the most remote areas and those with vulnerable populations.

59. **Ms. Khazova** asked whether a commissioner dealing with children's rights would be able to access enough resources to operate effectively.

60. **The Chair** asked whether reports that immunization rates were in decline and poor sanitation was the country's biggest challenge were true and, if so, what the Government planned to do to improve the situation, specifically in the context of the devolution of the health system.

The meeting rose at 1 p.m.